

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Falcon Telecable, a California Limited Partnership	)	
d/b/a Charter Communications	)	CSR-5986-E
	)	
Petition for Determination of Effective	)	
Competition in Hondo (TX0605), Port Aransas	)	
(TX0669), Shiner (TX0349) and Sinton (TX0741),	)	
Texas	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: November 8, 2002**

**Released: November 14, 2002**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Falcon Telecable, a California Limited Partnership d/b/a Charter Communications ("Charter") has filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in the four above-captioned communities in Texas (the "Communities").<sup>1</sup> Charter alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended ("Communications Act"), and Section 76.905(b)(2) of the Commission's rules, and seeks revocation of the certification of the local franchising authorities in the Communities to regulate basic cable service rates.<sup>2</sup> Charter claims the presence of effective competition in the Communities stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar Communications Corporation ("EchoStar"). The City of Port Aransas filed comments in response to the petition to which Charter replied.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>4</sup>

---

<sup>1</sup> 47 C.F.R. § 76.7.

<sup>2</sup> 47 U.S.C. § 543(a); 47 C.F.R. § 76.905(b)(2).

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> 47 C.F.R. § 76.905.

The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area. Based on the record in this proceeding, Charter has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds fifteen percent of the households in the franchise area.<sup>5</sup>

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>6</sup> Charter has provided evidence of the advertising of DBS service in news media serving the Communities.<sup>7</sup> In its comments, Port Aransas indicates that DirecTV does not provide local-into-local service to residents of that community.<sup>8</sup> However, the Commission's effective competition program comparability standard does not include a local television programming component.<sup>9</sup> We find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer more than 12 channels of video programming, including more than one non-broadcast channel.<sup>10</sup> Charter has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise areas. Charter has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and EchoStar.<sup>11</sup> Therefore, the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Charter sought to determine the competing provider penetration in its franchise areas by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within the Communities on a five-digit zip code basis.<sup>12</sup> However, rather than simply accepting SkyTrends' figures, Charter assumes that some of the DBS subscribers identified in the report may

---

<sup>5</sup> 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>6</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>7</sup> Petition at 3 and Exhibit 1.

<sup>8</sup> Port Aransas Comments at 1.

<sup>9</sup> *See* 47 C.F.R. § 76.905(g).

<sup>10</sup> *See* Petition at 4 and Exhibits 2, 3. Exhibit 2 contains the nationwide channel lineups of DirecTV and EchoStar and Exhibit 3 includes the channel line-ups for Charter's cable systems serving the Communities.

<sup>11</sup> *Id.* at 2-4.

<sup>12</sup> *Id.* at 5.

actually live in zip codes outside of the Communities.<sup>13</sup> To account for such a possibility, Charter has devised a formula that compares U.S. Census household data for the Communities and the relevant zip codes in order to derive an allocation to apply against the DBS subscriber count.<sup>14</sup> Charter also reduces the estimated DBS subscriber count by 15 percent to reflect the possibility that some households have subscribed to both cable and DBS service and to take into account commercial or test accounts.<sup>15</sup> The Commission believes that Charter's methodology is sound since it seeks to accurately quantify subscribers using the best available DBS subscriber data.

6. Charter asserts that it is the largest MVPD in the Communities because Charter's subscribership exceeds the aggregate DBS subscribership for each franchise area.<sup>16</sup> Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data,<sup>17</sup> we find that Charter has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in each of the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Charter has submitted sufficient evidence demonstrating that its cable systems serving the Communities are subject to effective competition.

---

<sup>13</sup> *Id.* Indeed, Port Aransas identifies portions of zip code 78373 that fall within the City of Corpus Christi. Port Aransas Comments at 2.

<sup>14</sup> Petition at 5-6 and Exhibits 4-6.

<sup>15</sup> *Id.* at 6. According to documentation previously provided to the Commission, SkyTRENDS' zip code subscriber numbers are inflated by roughly ten percent "due to dual receivers, and limited commercial and test accounts." *See Charter Communications*, DA 02-1919 at n.13 (MB rel. Aug. 6, 2002). Since then, SkyTRENDS has revised its inflation estimate from ten to fifteen percent. Petition at n.17.

<sup>16</sup> Petition at 5 and Exhibit 4. Port Aransas alleges that "Charter has many more actual cable users than is being reported." Port Aransas Comments at 1. Charter's petition is supported by a general declaration attesting to its truthfulness and accuracy. *See* Petition at Declaration. In any event, the subscriber numbers provided by Charter indicate that the cable operator is the largest MVPD within the Communities, including Port Aransas, thereby requiring that Charter's subscriber total be excluded from the competing MVPD penetration calculation. *See* 47 C.F.R. § 76.905(b)(2)(ii). As a result, the number of Charter subscribers in the Communities is irrelevant in determining whether the second prong of the competing provider test is satisfied.

<sup>17</sup> *See* Petition at Exhibit 6.

### III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by Falcon Telecable, a California Limited Partnership d/b/a Charter Communications **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates in Hondo, Port Aransas, Shiner and Sinton, Texas **ARE REVOKED**.

9. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>18</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division, Media Bureau

---

<sup>18</sup> 47 C.F.R. § 0.283.

## ATTACHMENT A

## CSR-5986-E

**COMMUNITIES SERVED BY  
FALCON TELECABLE, A CALIFORNIA LIMITED PARTNERSHIP  
D/B/A CHARTER COMMUNICATIONS**

<b>Communities</b>	<b>CUIDS</b>	<b>CPR*</b>	<b>2000 Census Households<sup>+</sup></b>	<b>Estimated DBS<sup>‡</sup> Subscribers<sup>+</sup></b>	<b>Charter Subscribers<sup>+</sup></b>
Hondo	TX0605	27.1	2,207	599	1,299
Port Aransas	TX0669	20.2	1,542	312	1,089
Shiner	TX0349	39.2	882	346	503
Sinton	TX0741	23.5	1,845	434	1,033

\*CPR = Percent of competitive DBS penetration rate.

<sup>+</sup>See Petition at Exhibits 4-6.

<sup>‡</sup>DBS subscriber estimate includes 15% reduction.